

McAuliffe



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sundstrand Data Control, Inc.

File: B-237020.2

Date: January 23, 1990

DIGEST

1. Protest of alleged solicitation defect which is apparent prior to the closing date for the receipt of initial proposals must be filed prior to the closing date to be considered timely.
2. Award will not be disturbed where protester was not prejudiced by alleged improper evaluation of its proposal where even if protester's proposal received maximum point scores in challenged evaluation areas, it still would not have been rated technically superior to awardee's lower-priced proposal.

DECISION

Sundstrand Data Control, Inc., protests the award of a contract to Beech Aircraft Corporation for altitude warning devices for fixed-wing aircraft under request for proposals (RFP) No. DAAJ09-89-R-0595, issued by the U.S. Army Aviation Systems Command, St. Louis, Missouri. Sundstrand generally alleges that its proposal was misevaluated by the agency.

We dismiss the protest in part and deny it in part.

The solicitation, issued June 9, 1989, specifically permitted offerors to propose either a ground proximity warning system (GPWS) or an altitude advisory system (AAS) in satisfying the requirements.^{1/} The RFP required the

^{1/} The parties generally agree that the two systems are functionally similar to the extent that each provides the pilot with low altitude warning. Generally, the basic difference between the systems appears to be that the GPWS, which is a technically more complex product and is

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contractor to provide a prototype of the device offered and to provide and install warning device kits in specified aircraft. The RFP also provided a 1-year option for additional kits.

Award under the solicitation was to be made to the offeror whose proposal presented the overall best value considering technical merit and cost. Section M of the solicitation provided that although cost, as an evaluation criterion, was not assigned a particular numerical value, it was to be weighed subjectively against the RFP's scored technical criteria to determine the overall best value to the government. The RFP expressly warned all offerors, however, that "[c]ost should be regarded as the most important evaluation factor." Proposals were also to be evaluated and scored under the following criteria, listed in descending order of importance: technical (including design criteria and systems function subfactors); maintenance/engineering support; prototype testing; and schedule. The above evaluation criteria were identical for both the GPWS and AAS products, except for the systems function subfactor.^{2/}

Both Sundstrand, which offered a GPWS, and Beech, which offered an AAS, submitted acceptable proposals in response to the RFP. A third proposal was rejected for offering an alternate system without delineating installation or kit costs. After the Army conducted an initial evaluation of the two acceptable proposals, best and final offers (BAFOs) were requested and received from Beech and Sundstrand by September 11. The Army made an award to Beech on September 18 for the AAS prototype, kits and installation, having determined that Beech's proposal was technically

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manufactured only by Sundstrand, will notify the pilot of what action to take depending upon the situation, whereas the AAS will advise the pilot of the situation, allowing the pilot to formulate his own course of action.

^{2/} The systems function evaluation subfactor concerns the proposed system's aural voice output (involving the ability to prioritize warning messages) and its flight condition alerts (concerning each system's ability to alert the crew, visually and aurally of, at least, six flight conditions listed in the RFP). Since the GPWS and AAS have different operative methods of warning the pilot of suspected dangerous conditions, the RFP's separate system function evaluation criteria for the GPWS and the AAS were presented according to each product's particular performance mode and capabilities.

superior to and lower in cost than Sundstrand's offer. Sundstrand filed its protest with our Office on September 20. The Army has suspended performance under the contract pending resolution of the protest.

Sundstrand contends that the Army's evaluation scheme was defective because different evaluation criteria were applied to the GPWS and the AAS devices, without any baseline comparison to evaluate the merits and/or weaknesses of one type of system over the other. Sundstrand states that this basis of protest did not arise until Sundstrand learned that the Army evaluated the proposals without comparing the more complex, advanced technical capability offered by Sundstrand's more expensive GPWS device to the capabilities of the AAS in determining overall best value. Sundstrand contends that although the RFP does not expressly provide for such a final product comparison, it assumed that such a common baseline evaluation would take place.

Despite Sundstrand's characterization of when it should have known its basis of protest, we find that Sundstrand here is essentially protesting the RFP's stated evaluation criteria, which did not require the Army's technical evaluation panel, as a final product comparison, to weigh the benefits and limitations of each product against the other. Regarding Sundstrand's assumption about a final comparison of the products, we note that the RFP at all times permitted either the GPWS or AAS, as equivalent alternatives to meet the Army's stated minimum needs. We find it unreasonable for Sundstrand to have assumed that even though the Army already stated that either product would be acceptable, that the Army would necessarily conduct an additional round of evaluations, which were not provided for in the RFP, to evaluate those capabilities. As such, we view Sundstrand's protest contention as concerning an alleged impropriety apparent in the solicitation which should have been protested prior to the closing date for receipt of proposals. Accordingly, we dismiss this protest ground as untimely. 4 C.F.R. § 21.2(a)(1) (1989).^{3/}

^{3/} Sundstrand also argues that the House Committee on Armed Services, in recommending funding for aircraft warning devices, referred to a ground proximity warning device (i.e. the GPWS offered by Sundstrand) and not an altitude advisory system (i.e., as offered by Beech). Therefore, according to Sundstrand, the Army is using funds for unauthorized purposes by buying the AAS. See H.R. Report No. 99-718, 99th Cong., 2d Sess. 13. However, since the

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The protester next alleges that its proposal was improperly evaluated and should have received a higher technical score which, despite its higher price, would then have led the Army to find that Sundstrand's proposal actually presented the overall best value to the government. Based upon the technical evaluation findings it obtained from the Army during a debriefing of its proposal, Sundstrand challenges approximately 17 notations or omissions on the evaluation sheets it was provided. Basically, the protester challenges the Army's technical evaluation as inconsistent since, at various instances, Sundstrand's proposal received the narrative rating of "Excellent," but did not receive the maximum number of points available under the particular technical criteria. At other times, Sundstrand claims the individual findings of two different evaluators were inconsistent. In other areas, Sundstrand generally contends that its proposal was wrongfully downgraded for alleged weaknesses which were not provided for in the RFP as proposal evaluation items or which the protester was not advised of during discussions.

Under solicitations which call for award on the basis of overall best value to the government, agency source selection officials have broad discretion to make cost/technical tradeoffs within the parameters of the RFP's evaluation scheme. See, e.g., Southeastern Computer Consultants, Inc., B-229064, Jan. 19, 1988, 88-1 CPD ¶ 48. We will not question such a determination unless there is a clear showing of unreasonableness, abuse of discretion, or a

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RFP, as issued, permitted an offer of an AAS we find that Sundstrand knew or at least should have known this basis of protest as early as June 9, when the RFP was issued. In fact, the record indicates that as early as April 14, in response to the Commerce Business Daily (CBD) synopsis of the requirement, Sundstrand first presented this protest contention to the Army. Since Sundstrand failed to file its protest with our Office until September 18, 5 months after the CBD notice, over 14 weeks from the RFP's issuance and 8 weeks after the initial closing date, we find this protest issue untimely and not for our consideration. 4 C.F.R. § 21.2(a). In any event, the House Appropriations Committee, in a different report, specifically stated that "[i]n conducting a competitive procurement for these items, all possible alternatives shall be considered." See H.R. Rep. No. 99-793, 99th Cong., 2d Sess. 110. We think this is exactly what the Army did here.

violation of the procurement statutes or regulations. Comarco, Inc., B-225504, B-225504.2, Mar. 18, 1987, 87-1 CPD ¶ 305. The burden is not met by the protester's mere disagreement with the evaluation or its good faith belief that its own proposal should have achieved a higher rating. See Sigma Sys., Inc., B-225373, Feb. 24, 1987, 87-1 CPD ¶ 205.

Initially, we note that our review of the record reveals that the agency's award to the lower-priced, higher technically rated proposal comported with the solicitation's evaluation scheme which gave substantial weight to technical factors, but considered cost most important. In any event, despite Sundstrand's individual challenges to the Army's evaluation of its proposal, the record shows that even if Sundstrand received the maximum points available in the areas it complains about, it still would not have been considered technically superior to Beech's proposal and thus, would not displace Beech for the award. At best, the Sundstrand and Beech proposals would have been found technically equal, and the choice of Beech for award would have been required by the fact that Beech proposed to perform the effort for approximately \$800,000 less than Sundstrand.^{4/} Accordingly, we find that the protester has failed to show that the Army's award to Beech was improper.

The protest is denied.


James F. Hinchman
General Counsel

^{4/} In response to Sundstrand's contention that it has been prejudiced by the Army's evaluation here since the GPWS is known to be a more expensive product than the AAS, we note that there is no indication in the record that Sundstrand was precluded in any way from offering, in the alternative, the less expensive AAS device.